United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
and	)	**Docket No. 20-0488**
	)	**Issued: December 8, 2020**
U.S. POSTAL SERVICE, WARREN POST OFFICE, Warren, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 2, 2020 appellant, through counsel, filed a timely appeal from a November 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the November 27, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right ankle condition causally related to the accepted June 15, 2018 employment incident.

FACTUAL HISTORY

On July 24, 2018 appellant, then a-34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2018 he rolled his right ankle when he stepped in a hole as he was carrying a large package while in the performance of duty. He stopped work on July 14, 2018. On the reverse side of the claim form the employing establishment contended that appellant was not injured in the performance of duty; rather, he injured his right ankle in March 2018 and he was not employed with the employing establishment at that time.

In a June 27, 2018 medical note, Tina Daerr, a certified registered nurse practitioner, noted that appellant was seen on that date. She indicated that he could return to work on July 2, 2018 and recommended that he wear an ankle support sleeve while working.

In disability certificate notes dated July 11 to 23, 2018, Dr. Dan H. Gottwald, an orthopedic surgery specialist, provided work restrictions.

Appellant also submitted a continuation of pay (COP) nurse report dated July 31, 2018, which indicated that his anticipated return to work date was August 30, 2018.

In a development letter dated August 1, 2018, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's traumatic injury claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements, as well as a record of his deliveries made on June 15, 2018. It afforded both parties 30 days to respond.

In a July 11, 2018 medical note, Dr. Gottwald indicated that appellant was injured on June 15, 2018 when he made a misstep and twisted his right ankle. He noted that appellant was seen in the emergency room where x-rays were taken and revealed no fractures. Dr. Gottwald related that appellant had some resolving ecchymosis along the lateral border of his right foot and tenderness along the posterior tibialis tendon. He diagnosed a right ankle sprain and released appellant to unrestricted work. In a separate medical note of even date, Dr. Gottwald reiterated his diagnosis for acute right ankle sprain, prescribed steroids, and released appellant to unrestricted work.

In a July 23, 2018 medical note, Dr. Gottwald noted that appellant continued to have pain in the Achilles tendon region. He ordered physical therapy and advised that appellant was unable to return to work.

In a July 23, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care.

Appellant underwent physical therapy treatment from July 25 through August 22, 2018.

In a July 26, 2018 attending physician's report (Form CA-20), Dr. Gottwald diagnosed acute right ankle sprain and checked a box marked "Yes" indicating that appellant's diagnosed condition was caused or aggravated by the June 15, 2018 employment incident.[4]

In an August 2, 2018[5] letter, the employing establishment controverted appellant's claim, noting that he told his postmaster that he had previously injured the same ankle in March 2018 before he began working at the employing establishment.

In an undated outpatient order form, Dr. Gottwald diagnosed acute right ankle sprain. In a Form CA-20 dated August 14, 2018, he diagnosed acute right ankle sprain and right foot pain, noting that appellant was advised to resume light-duty work on July 16, 2018. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Gottwald advised that appellant should engage in sedentary work only.

In an August 17, 2018 letter, the employing establishment responded to OWCP's August 1, 2018 development letter, noting that appellant was not employed by the employing establishment from November 17, 2017 through May 11, 2018. It indicated that it was attaching a copy of its August 2, 2018 letter controverting appellant's claim.

In an August 24, 2018 response to OWCP's questionnaire, appellant reiterated his account of the claimed June 15, 2018 employment incident, noting that he was crossing the street during his shift, carrying a large package, when he slipped into a hole in the street and rolled his ankle. He asserted that the incident occurred around 2:00 p.m. Appellant indicated that he was limping immediately after the incident, but he walked until the pain subsided and continued his route. He noted that in March 2018 he had previously rolled his right ankle and that he initially assumed that he might have aggravated this injury while delivering the package on June 15, 2018. Appellant related that he told his postmaster at the time of the June 15, 2018 employment incident that he had previously injured the same ankle back in March 2018 and that he "had bad luck in that ankle as a joke."

By decision dated September 5, 2018, OWCP denied appellant's claim. It accepted that the June 15, 2018 employment incident occurred as alleged and that a medical condition had been diagnosed. However, OWCP found that the medical evidence of record was insufficient to establish that the accepted June 15, 2018 employment incident caused or aggravated the diagnosed condition.

In a September 10, 2018 medical note, Dr. Gottwald noted appellant's complaints of discomfort in the Achilles region. He diagnosed right posterior foot/ankle pain.

A September 14, 2018 right ankle magnetic resonance imaging (MRI) scan revealed mild distal Achilles tendinosis and mild tenosynovitis.

[4] On July 28, 2018 appellant accepted an offer of modified assignment to work a limited-duty position casing mail.

[5] The Board notes that the employing establishment dated the letter 2017; however, this appears to be a typographical error.

In a September 17, 2018 medical note, Dr. Gottwald reviewed the September 14, 2018 right ankle MRI scan and diagnosed right ankle Achilles tendinitis.

On August 26, 2019 appellant, through counsel, requested reconsideration.

In an August 20, 2019 narrative report, Dr. Sami E. Moufawad, Board-certified in physical medicine and rehabilitation, reviewed the medical evidence of record, detailed the history of injury and provided physical examination findings. He indicated that the September 14, 2018 right ankle MRI scan report first demonstrated the Achilles tendinitis. Dr. Moufawad noted that appellant had eventually undergone surgery on his right ankle to remove a bone fragment in June 2019 and stopped working on August 11, 2019. On physical examination he found continuous clinical presentation of the peroneal tendinitis. Dr. Moufawad further observed that appellant still had pain below lateral malleolus, which was minimal at rest, but worse with standing and walking. He diagnosed right Achilles tendinitis, calcified Achilles tendinitis, and peroneal tendinitis. Dr. Moufawad provided an overview of anatomy of the right foot. He explained that calcaneus or os calcis was the main bone in the foot where the Achilles tendon inserted, and that there were a set of tendons around the medial malleolus and another set of tendons laterally. Dr. Moufawad further explained that, when appellant stepped in a pothole on June 15, 2018, his right foot rolled internally, putting excessive tension on the lateral tendon group (peroneal tendons) because the inversion abruptly stretched these tendons. He opined that this mechanism of injury had put a "mechanical toll on the Achilles tendon." Dr. Moufawad further explained that the acute injury to the Achilles tendon led to the tendinitis, which later evolved into calcified tendinitis and induced clicking and posterior impingement that required the surgical excision in June 2019. He opined that appellant's Achilles tendinitis, calcified Achilles tendinopathy, and peroneal tendinitis were the direct results of the accepted June 15, 2018 employment incident. Dr. Moufawad further noted that, while appellant no longer had symptoms in the Achilles tendon, he still suffered from the peroneal tendinitis.

In an August 30, 2019 medical report, Dr. Mark A. Krahe, an orthopedic surgery specialist, noted that appellant previously undergone an arthroscopic excision. He reported that appellant had pain along the sinus tarsi and lateral ankle. Dr. Krahe conducted a physical examination, which revealed that the previous posterior portal sites were well healed and that appellant no longer had any posterior impingement with plantar flexion and axial load. He diagnosed sinus tarsi syndrome and os trigonum syndrome of the right ankle.

In a September 18, 2019 medical report, Dr. William E. Saar, an orthopedic surgery specialist, noted that appellant was seen for a second opinion evaluation. He indicated that appellant had an initial injury several months back, exhausted conservative measures, and underwent an arthroscopic/endoscopic posterior impingement release performed by Dr. Krache in June 2019. Dr. Saar noted that appellant continued to have pain even after the surgery, therapies, and injections. He diagnosed ongoing right ankle and foot pain, status post endoscopic excision, and posterior impingement lesion. Dr. Saar recommended a new MRI scan.

By decision dated November 27, 2019, OWCP denied modification of the September 5, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[7] that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[8] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[10]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[12]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

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[6] *Supra* note 2.

[7] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

ANALYSIS

The Board finds that this case is not in posture for decision.

In his August 20, 2019 narrative report, Dr. Moufawad noted that appellant rolled his right ankle while carrying a heavy package at work when he stepped in a pothole. He explained that calcaneus or os calcis was the main bone in the foot where the Achilles tendon inserted, and that there were a set of tendons around the medial malleolus and another set of tendons laterally. Dr. Moufawad indicated that the medial tendons stabilized and turned the foot medially (inversion) and the lateral tendons stabilized and turned the ankle laterally (eversion). He further explained that, when appellant stepped in the pothole on June 15, 2018, his right foot rolled internally, putting an excessive tension on the lateral tendon group (peroneal tendons) because the inversion abruptly stretched these tendons. Dr. Moufawad opined that this acute injury to the Achilles tendon led to the tendinitis, which later evolved into calcified tendinitis, concluding that appellant's diagnosed conditions were directly caused by the accepted June 15, 2018 employment incident.

The Board finds that, although Dr. Moufawad's narrative report is insufficient to discharge appellant's burden of proof to establish that his right ankle conditions were caused or aggravated by the accepted June 15, 2018 employment incident, his report constitutes substantial, uncontradicted evidence in support of his claim, and provides sufficient rationale to require further development of the case record by OWCP.[14] Dr. Moufawad provided a history of injury, referenced objective medical reports demonstrating injury, expressed his opinion on causal relationship within a reasonable degree of medical certainty, and provided a pathophysiologic explanation as to the mechanism by which rolling the right ankle while carrying a heavy package on June 15, 2018 would result in appellant's diagnosed conditions.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[15] It has an obligation to see that justice is done.[16]

On remand OWCP shall refer appellant, the case record, and a statement of facts to a specialist in the appropriate field of medicine for an evaluation and a rationalized medical opinion as to whether the accepted June 15, 2018 employment incident caused, contributed to, or aggravated his diagnosed right ankle conditions and if he had any preexisting conditions from the previous March 2018 incident. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

[14] *See Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *K.P.*, Docket No. 18-0041 (issued May 24, 2019); *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *G.C.*, Docket No. 16-0666 (issued March 17, 2017); *Horace Langhorne*, 29 ECAB 280 (1978).

[15] *T.L.*, Docket No. 19-1572 (issued March 12, 2020); *see C.C.*, Docket No. 18-1453 (issued January 28, 2020); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[16] *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *see B.C.*, Docket No. 15-1853 (issued January 19, 2016).

CONCLUSION

The Board finds that this case is not in posture for decision.[17]

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 8, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[17] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).